

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-3384

UNITED STATES OF AMERICA

v.

ERIC LAMAR WORMSLEY,
a/k/a Michael Wormsley,
a/k/a Michael Wallace

Eric Lamar Wormsley,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
D.C. Criminal No. 02-cr-00203
(Honorable Maurice B. Cohill, Jr.)

Argued February 9, 2004

Decided May 18, 2004

Certiorari Granted January 24, 2005

Judgment Vacated and Remanded from the
Supreme Court of the United States
January 24, 2005

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 16, 2005

Before: SCIRICA, *Chief Judge*, ROTH and McKEE, *Circuit Judges*

(Filed May 27, 2005)

OPINION OF THE COURT

SCIRICA, *Chief Judge*.

Appellant Eric Lamar Wormsley pled guilty to one count of being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and one count of possession of heroin with intent to distribute, in violation of 18 U.S.C. § 841(a)(1). The District Court sentenced Wormsley to 80 months in prison. Wormsley timely appealed his sentence to this Court, but did not challenge his conviction.

In *United States v. Schnupp*, 368 F.3d 331 (3d Cir. 2004), we affirmed his sentence. The Supreme Court granted certiorari. In *Wormsley v. United States*, 125 S. Ct. 1055 (Jan. 24, 2005), the Supreme Court vacated the judgment and remanded for further consideration in light of *United States v. Booker*, 543 U.S. - -, 125 S. Ct. 738 (2005).

On remand to this Court, appellant challenges his sentence under *Booker*. Having determined that the sentencing issues appellant raises are best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with *Booker*.